

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL SWENSON,
Plaintiff,

v.

UNITED STATES, et al.,
Defendants.

No. CV-07-305-FVS

ORDER OF DISMISSAL

THIS MATTER comes before the Court for consideration of multiple motions.

RULINGS

Health Care Providers

Mr. Swenson has asserted state tort and federal civil rights claims against a number of health care providers in the State of Washington. His state tort claims must be dismissed because he has not satisfied the procedural requirements for bringing tort claims against Washington health care providers, RCW 7.70.100; and, even if he had, he has failed to provide expert testimony indicating that any defendant breached a governing standard of care. See *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989) ("What is or is not standard practice and treatment in a particular case, or whether the conduct of the physician measures up to the standard is a question for experts and can be established only by

1 their testimony."). Mr. Swenson's federal civil rights claims against
2 the health care providers must be dismissed because they are not state
3 actors. See *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826,
4 835-36 (9th Cir.1999).

5 State of Washington

6 Mr. Swenson has asserted claims against the State of Washington
7 and a state agency. His claims against the State and its agencies
8 must be dismissed because those claims are barred by the Eleventh
9 Amendment to the Constitution. See *Regents of the Univ. of Cal. v.*
10 *Doe*, 519 U.S. 425, 429, 117 S.Ct. 900, 903-04, 137 L.Ed.2d 55 (1997).

11 Verizon Communications, Inc.

12 Mr. Swenson has asserted a claim against Verizon Communications,
13 Inc. The nature of his claim is unclear. In any event, the claim
14 must be dismissed because he has failed to effect service of process.
15 Fed.R.Civ.P. 4(h).

16 Remaining Defendants

17 There is no indication that Mr. Swenson has served any other
18 defendant with process. Although the Court is mindful that it has
19 discretion to extend the deadline for service of process, Fed.R.Civ.P.
20 4(m), the Court declines to do so. Accordingly, Mr. Swenson's
21 remaining claims will be dismissed.

22 **IT IS HEREBY ORDERED:**

23 1. The motion for summary judgment that was filed by Michael
24 Cruz, M.D., (**Ct. Rec. 14**) is granted. Mr. Swenson's claims against
25 Dr. Cruz are **dismissed with prejudice**.

26 2. The motion for summary judgment that was filed by Timothy

1 Chestnut, M.D., James Joy, M.D., William Corell, M.D., Robert Laugen,
2 M.D., Linda Smith, and Cancer Care Northwest (**Ct. Rec. 20**) is granted.
3 Mr. Swenson's claims against Dr. Chestnut, Dr. Joy, Dr. Corell, Dr.
4 Laugen, Ms. Smith, and Cancer Care Northwest are **dismissed with**
5 **prejudice.**

6 3. The motion to dismiss that was filed by the State of
7 Washington on behalf of itself and its agencies (**Ct. Rec. 37**) is
8 granted. Mr. Swenson's claims against the State of Washington and its
9 agencies are **dismissed with prejudice.**

10 4. The motion to strike that was filed by the State of Washington
11 (**Ct. Rec. 37**) is denied as moot.

12 5. The motion to dismiss that was filed by Verizon
13 Communications, Inc. (**Ct. Rec. 41**) is granted. Mr. Swenson's claims
14 against Verizon are **dismissed without prejudice.**

15 6. Mr. Swenson's claims against all remaining defendants are
16 dismissed without prejudice.

17 **IT IS SO ORDERED.** The District Court Executive is hereby
18 directed to file this order, furnish copies to the plaintiff and to
19 counsel for the defendants, enter judgment accordingly, and **close** this
20 file.

21 **DATED** this 6th day of August, 2008.

22
23 s/ Fred Van Sickle
24 Fred Van Sickle
25 Senior United States District Judge
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